

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In re:

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of Section 73.202(b)

MM Docket No. 02-23

Table of Allotments

RM-10359

FM Broadcast Stations

RM-10434

Keeseville, New York; Hartford and

White River Junction, Vermont

To: Chief, Media Bureau

**RESPONSE OF HALL COMMUNICATIONS, INC.
TO THE REQUEST FOR JOINT SETTLEMENT**

Hall Communications, Inc. ("Hall"), by and through its attorneys, hereby submits this Response to the Request for Joint Settlement (the "Settlement Request") filed in this proceeding by Great Northern Radio, LLC and Family Broadcasting, Inc. (collectively, the "Petitioners") on September 3, 2002.

In the Settlement Request, which was included in the Petitioners' Reply to Opposition to Motion to Strike ("Motion to Strike Reply") (*see Motion to Strike Reply*, pages 7-10), the Petitioners proposed that the parties "settle" on (i) the allotment of Channel 231A to Keeseville, New York, in order to satisfy Hall's request for a Class A drop-in for Keeseville,¹ and (ii) the reallocations of the Petitioners' Class A from White River Junction to Hartford, Vermont, and their Class C3 from Hartford to Keeseville, in order to satisfy the Petitioners' originally-

¹ Hall questions the procedural basis for Petitioners' new Channel 231A proposal at this time in the proceeding. However, as shown herein, the Commission on its own could decide on the Channel 231A allotment, in place of Hall's 282A allotment, without Petitioners' reallocation proposals, as a means to resolve the issues which the parties have raised.

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requested community of license changes for its stations.² Apparently, after submitting four earlier pleadings attacking Hall's Channel 282A Counterproposal, the Petitioners have just now discovered that Channel 231A can also be allotted to Keeseville.

Hall has no objection to the allotment of Channel 231A at Keeseville and would apply for and construct a station to operate on that channel if it were allotted in lieu of Channel 282A. However, Hall still objects to the Petitioners' proposed community-of-license changes since they would result in the removal of the sole allotted FM and nighttime service from White River Junction merely to upgrade one of Petitioners' existing stations by moving it closer to the larger Burlington, Vermont, market. Contrary to the Petitioners' claim (*see Motion to Strike Reply*, page 8), and discussed in more detail below, *everyone does not win* under the Petitioners' settlement proposal.

DISCUSSION

There would be considerable public interest benefit to a Channel 231A allotment to Keeseville. Just as with the Channel 282A allotment, the Channel 231A allotment would be the first local service allocated to Keeseville. Also, the 231A allotment would have no transmitter site availability problems.³ Nor would it be subject to challenge on the basis of the line-of-sight

²The Petitioners, in their Petition for Rulemaking which initiated this proceeding, proposed the reallocation of (i) Channel 282C3 from Hartford, Vermont, to Keeseville, New York, and (ii) Channel 237A from White River Junction, Vermont, to Hartford. In contrast, in its Counterproposal filed on April 1, 2002, Hall simply proposed the allotment of Channel 282A at Keeseville (the "Counterproposal"), thus preserving the existing allotments at Hartford and White River Junction, while still providing a first local service to Keeseville.

³ In making the proposal to allot Channel 231A, the Petitioners apparently have abandoned their rigorously argued position that the location of any tower in the Adirondack State Park is impossible. Just as with Hall's proposed 282A reference site, the Channel 231A
(continued...)

issues Petitioners have raised in connection with Hall's proposed Channel 282A assignment to Keeseville.⁴

Petitioners Propose an Unnecessary Removal of an Existing Service

Regardless of the channel the FCC prefers, Petitioners' community-of-license change proposals should be rejected because once a new Class A channel is allocated to Keeseville, those proposals no longer afford any public interest benefit. Indeed, the reshuffling of Petitioners' stations would cause White River Junction to lose its only allotted full-time local service, and, as Hall has shown, would result in a loss of service to a total of 106,130 people. Moreover, by the Petitioners' own admission, 362 people would be left with less than five aural services (*see Petitioners' Reply to Hall's Counterproposal* at page 6). The Commission has stated:

[T]he public has a legitimate expectation that existing service will continue, and this expectation is a factor which we must consider independently against the service benefits that may result from reallocating a channel from one community to another.⁵

³(...continued)

reference site is located in the State Park. Attached as Exhibit 1 is a map produced on the Adirondack State Park website demonstrating that the proposed site for Channel 231A at Keeseville is located within the State Park boundaries.

⁴ As shown in Hall's Motion to Strike, its Channel 282A proposal meets the requirements of Section 73.315(b) of the rules. If, however, the Commission were to prefer Channel 231A on the basis of the alleged terrain obstructions, Hall would be satisfied with that assignment as an alternative to Channel 282A. Petitioners' engineer states (*Motion to Strike Reply*, Eng. Statement, p. 2) Channel 231A affords "unobstructed line of sight into Keeseville."

⁵ *Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990).

Therefore, the loss in expectation of continuing service is a significant public interest factor that must be weighed when considering Petitioners' proposals.

Petitioners Have Mooted Their Best Arguments

But, by identifying and proposing the Channel 231A allotment – a facility which Petitioners say has none of the disabilities that Petitioners attach to Hall's Channel 282A proposal – Petitioners have eliminated the best arguments they have against assigning a Class A facility to satisfy Keeseville's need for a first local service. Stated differently, if Petitioners' compromise proposal (Channel 231A) were adopted, and assuming the Commission were to credit Petitioners' line-of-sight arguments against assignment of Channel 282A, the Channel 282C3 change in community from Hartford to Keeseville is no longer necessary to provide Keeseville with its first local service. Thus, under the Commission's allotment priorities, rather than providing Keeseville with its first local service, the reallocation of Channel 282C3 to Keeseville would constitute a second local service, which is classified under the Commission's fourth allotment priority.⁶

The Public Interest Scale Tips Decisively Towards a Class A Assignment

In each of the cases cited by Petitioners in support of their proposed reallocations, such decisions authorizing loss of existing service were justified by the public interest benefits of establishing first local services.⁷ As has been shown in this case, the Petitioners' proposed 231A

⁶ The priorities are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight given to priorities (2) and (3).] *See Revision of FM Assignment and Policies and Procedures*, 90 FCC 2d 88 (1982).

⁷ *See Earle, Pocohantas and Wilson, Arkansas, and Como and New Albany, Mississippi*, 10 FCC Rcd 8270 (1995); *See also Huntsville and Willis Texas*, 10 FCC Rcd 3329 (1995);

(continued...)

allotment eliminates not only their best arguments against a Class A assignment, but, in the process, their only supporting countervailing first local service justification. Moreover, the proposal suffers from the negative public interest implications, pointed out above, that result from depriving persons of service they have come to expect. Thus, the public interest scale tips decisively in favor of the Commission allocating either Channel 282A, or if that channel is deemed unsuitable, Channel 231A as Keeseville's first local service.⁸

CONCLUSION

Therefore, given the facts that (i) Channel 231A can be allotted to Keeseville as a first local service; (ii) the Petitioners have identified and support this allotment; (iii) the allotment of Channel 282C3 to Keeseville would constitute a second, not a first, local service if either Channel 282A or 231A is allocated; and (iv) the Petitioners' requested community-of-license changes would eliminate an existing service to more than 106,000 people; the allotment of Channel 282A or, alternatively, Channel 231A, without the community changes, would best serve the public interest. Consequently, with the Commission's adoption of Petitioners' Channel 231A proposal or of Hall's Channel 282A Counterproposal, a first local service would be provided to Keeseville. Under either scheme, and with the Commission's rejection of

⁷(...continued)

Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota, 66 Fed. Reg. 829 (2002).

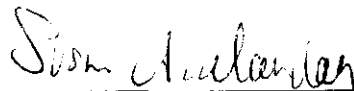
⁸ Hall made the same argument in its Counterproposal that Petitioners' proposed community-of-license changes and their resulting service loss would not be necessary and must be rejected in light of Hall's proposed Keeseville Channel 282A allotment. Hall argued that as long as the Commission allotted Channel 282A as Keeseville's first local service, the existing services at White River Junction and Hartford could be left where they were. With a Class A allotment, the community of Keeseville would obtain its first local service and, with no other community of license changes, no one else would have to suffer any loss of service.

Petitioners' requested community-of-license changes, the first local Keeseville allotment would be open for public auction, no one would suffer the loss of an existing local service, and no one would be left underserved.

WHEREFORE, for the reasons set forth herein, Hall declines Petitioners' proposed settlement package and urges the Commission to (i) allot either Channel 231A or Channel 282A at Keeseville, New York, as its first local service, and (ii) reject Petitioners' efforts to move closer to Burlington by reallocating their Hartford Channel 282C3 to Keeseville. Grant of either Class A allotment, without Petitioners' community of license changes, will result in a preferential arrangement of the FM Table of Allotments and will better serve the public interest.

Respectfully submitted,

HALL COMMUNICATIONS, INC.

By: 
Susan A. Marshall
Lee G. Petro

Its Attorneys

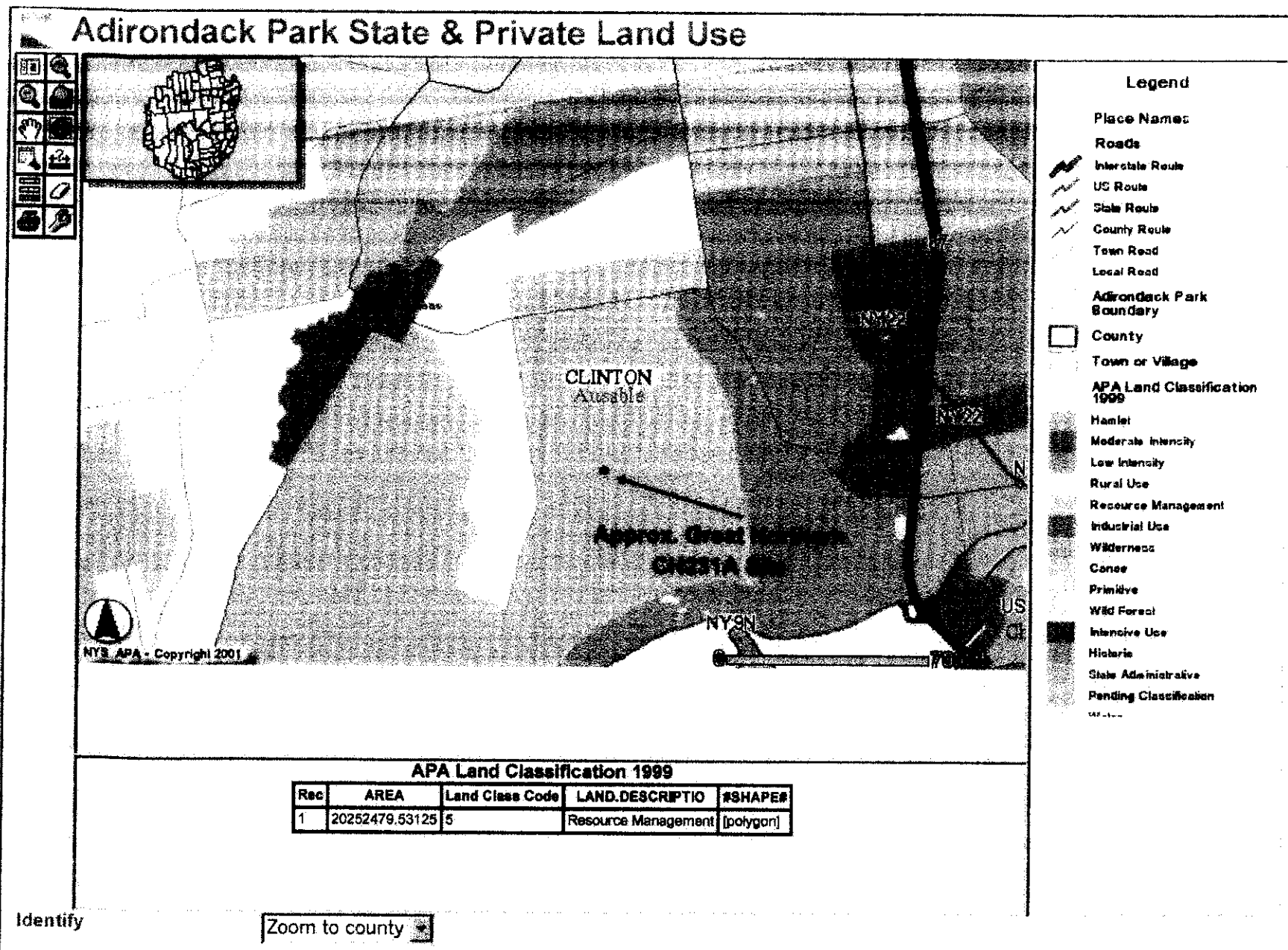
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September 20, 2002

F:\Hall, Vermont Pleadings\HallResponse

Exhibit 1

Map Showing Site for Channel 231A
Within Adirondack State Park



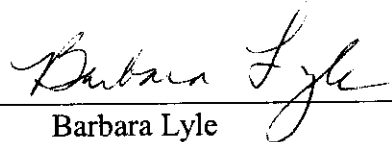
CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary with the law firm of Fletcher, Heald & Hildreth, P.L.C., certify that I have this 20th day of September, 2002, sent by first-class U.S. mail, postage-prepaid, or Hand Delivery, as indicated, a copy of the foregoing "Response of Hall Communications, Inc. to the Request for Joint Settlement.

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*By Hand Delivery